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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 150122069-5272-01]

RIN 0648-XD740

**Endangered and Threatened Species; 90-Day Finding on two Petitions to List
Porbeagle Sharks**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 90-day petition finding; request for information.

SUMMARY: We, NMFS, are accepting two 2010 petitions to list porbeagle sharks (*Lamna nasus*) on the Federal List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) of 1973, as amended. This action is being taken in response to a December 12, 2014, U.S. District Court decision that our previous rejection of the petitions in 2010 was arbitrary and capricious. To ensure a comprehensive review, we are soliciting scientific and commercial data and other information relevant to the status of porbeagle sharks worldwide. We will publish the results of that review and will make a finding as to whether the petitioned action is or is not warranted on or before December 12, 2015.

DATES: Written comments, data and information related to this petition finding must be received no later than 5 p.m. local time on May 12, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0013, by either of the following methods:

ELECTRONIC SUBMISSION: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0013*,
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

- OR -

MAIL: Submit written comments to Assistant Regional Administrator, Protected Resources Division, Attn: Porbeagle Shark Status Review, Greater Atlantic Regional Fisheries Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

INSTRUCTIONS:

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted without change for public viewing on *www.regulations.gov*. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The petitions and other pertinent information are also available electronically on our

website at:

http://www.greateratlantic.fisheries.noaa.gov/protected/pcp/soc/porbeagle_shark.html.

FOR FURTHER INFORMATION CONTACT:

Kimberly Damon-Randall, NMFS, Greater Atlantic Region, (978) 281-9328; or Marta Nammack, NMFS, HQ, (301) 427-8469.

SUPPLEMENTARY INFORMATION:

Background

We received a petition from Wild Earth Guardians (WEG) dated January 20, 2010, requesting that we list porbeagle sharks (*Lamna nasus*) throughout their entire range, or as Northwest Atlantic, Northeast Atlantic, and Mediterranean Distinct Population Segments (DPS) under the ESA, as well as designate critical habitat for the species. We also received a petition from the Humane Society of the United States (HSUS), dated January 21, 2010, requesting that we list a Northwest Atlantic DPS of porbeagle sharks as endangered in the North Atlantic under the ESA. Information contained in the petitions focused on the species' imperilment due to historical and continued overfishing; modification of habitat through pollution, climate change, and ocean acidification; failure of regulatory mechanisms; and low productivity of the species.

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted (90-day finding). The ESA implementing regulations for NMFS define "substantial information" as the amount of information that would lead a reasonable

person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). If a positive 90-day finding is made, then we must promptly conduct a review of the status of the species concerned and publish a finding indicating whether the petitioned action is or is not warranted within one year (1-year finding).

On July 12, 2010, we published a 90-day finding in the *Federal Register* (75 FR 39656;

http://www.nmfs.noaa.gov/pr/species/frnotices/negative90d/porbeagle_shark_75_fr_39656.pdf) stating that neither petition presented substantial information indicating that listing porbeagle sharks may be warranted. Accordingly, a status review of the species was not initiated.

In August 2011, the petitioners filed complaints in the U.S. District Court for the District of Columbia challenging our denial of the petitions (*Case 1:11-cv-01414-BJR HUMANE SOCIETY OF THE UNITED STATES v. BLANK et al.*). On November 14, 2014, the court published a Memorandum Opinion vacating the 2010 90-day finding for porbeagle shark, and ordering NMFS to prepare a new 90-day finding. The court entered final judgment on December 12, 2014. This document represents our new 90-day finding.

Given the length of time between when we received the petitions in 2010 and this new 90-day finding, we have taken into account both information submitted with and referenced in the petitions as well as all other new information readily available in our files regarding porbeagle sharks globally. We have thoroughly reviewed the Court's Memorandum Opinion, the 2010 petitions and all other information available in our files in preparing our new finding. As we did in 2010, we consulted with experts within the

Greater Atlantic Regional Fisheries Office's Sustainable Fisheries Division, NMFS' Highly Migratory Species Management Division, Northeast Fisheries Science Center-Apex Predator Program, and the Southeast Fisheries Science Center in November and December 2014 to provide context for the petitions and the information in our files.

The 2010 Petitions and New Information on Porbeagle Sharks

Both petitions clearly identified themselves as petitions and included the identification information for the petitioner, as required in 50 CFR 424.14(a). The petitions indicated their recommended administrative measure and gave the scientific and common names for porbeagle sharks. The WEG petition requested that we list under the ESA porbeagle sharks throughout their entire range. Alternatively, the WEG petition proposed that porbeagle be listed under the ESA as three distinct population segments (DPSs) as follows: the Northwest Atlantic DPS, the Northeast Atlantic DPS and the Mediterranean DPS. The petition states "the species and DPSs face threats from historic and continued overfishing, as well as a low reproduction rate, which hinders its recovery." The information contained in the WEG petition focuses on historical and continued overfishing of the above named DPSs of porbeagle sharks globally. The HSUS petition only addresses a Northwest Atlantic DPS of porbeagle sharks, requesting they be listed as endangered in the Northwest Atlantic.

Several new references were available in our files since remand that were not available when the 2010 petitions were received. In 2009, the International Council for the Exploration of the Sea (ICES) and the International Commission for the Conservation of Atlantic Tunas (ICCAT) conducted a stock assessment for porbeagle sharks (ICES/ICCAT, 2009). The information in this report was considered in our 2010 90-day

finding, and this report continues to be a good source of recent, comprehensive porbeagle shark data. However, there is a new Canadian assessment for the Northwest Atlantic stock based on information contained in Campana *et al.* 2012 (2012 Canadian assessment). Also, other new information is contained in recent ICCAT proceedings, regulatory documents, published literature and FR notices since the ICES/ICCAT 2009 stock assessment (Andrushchenko *et al.*/Canada, 2014; Bendall *et al.*, 2013; Campana *et al.*, 2012; Canada/ICCAT, 2014; CPC/ICCAT, 2014; Gallagher *et al.*, 2014; Kitamura and Matsunaga, 2010; Marua *et al.*, 2012; NEAFC/ICCAT, 2013; NMFS/HMS, 2013; SCRS, 2014; Semba *et al.*, 2013; 75 FR 250; 79 FR 75068; 50 CFR part 635).

Additionally, several new management actions were implemented or became effective prior to remand, but after the 2010 petitions were received. These include the addition of porbeagle sharks to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, a 2013 prohibition on directed fishing for porbeagle in Canada and increasing protections in the European Union (EU) which will more closely regulate trade of the species.

In 2014, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) published a new assessment and status report on porbeagle sharks in Canada. The report reaffirms COSEWIC's designation of the species as "endangered" due to COSEWIC criterion A2b under the Species at Risk Act. The report states the species meets this criterion "because the abundance of mature females has declined by 74-77% over the past 2.6 generations. Although the directed fishery has been suspended, the species continues to be taken as bycatch in a variety of other fisheries." As noted throughout the report, the species decline has halted, and while numbers of porbeagle

remain low compared to pre-exploitation levels, the information does indicate the species trend is stable. The report states that in Canada, the “greatest current threat to porbeagle is overfishing due to multiple bycatch fisheries, which are not closely monitored, where a large portion of the catch may be discarded and unreported.” While this report is an update of a 2004 COSEWIC report, relied upon by the petitioners, which also assessed porbeagle as endangered based on the decline that the species has experienced, the emphasis the new status report places on the potential threat to the species from ongoing, unregulated bycatch in Canada is of concern and represents new information not previously considered. A status review is the appropriate means for assessing this potential threat.

COSEWIC also provides information on whether the Northwest Atlantic stock constitutes a single designatable unit. The report indicates that the Northeast and Northwest populations of porbeagle sharks are separate. This conclusion appears to be based solely on conventional tagging information, consistent with the petitions, and does not appear to incorporate any information from genetic studies. In our 2010 finding, we concluded, based on genetic information, that porbeagle from the Northeast and Northwest Atlantic are not discrete. While we believe genetics are a more reliable indicator of discreteness than tagging information, we recognize the uncertainty about the existence of discrete populations. The appropriate means for addressing this uncertainty is to consider the information in a review of the status of the species.

Petition Finding

In light of the information described above, which indicates that the petitioned actions may be warranted, we are accepting the petitions and initiating a review of the status of the species.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning porbeagle sharks. We request information from the public, concerned governmental agencies, Native American tribes, the scientific community, conservation groups, industry, or any other interested parties concerning the current and/or historical status of porbeagle sharks.

Specifically, we are soliciting information, including unpublished information, in the following areas: (1) historical and current distribution and abundance of porbeagle sharks throughout their range; (2) historical and current population trends for porbeagle sharks; (3) life history and habitat requirements of porbeagle ; (4) genetics and population structure information (including morphology, ecology, behavior, etc.) for populations of porbeagle; (5) past, current, and future threats to porbeagle, including any current or planned activities that may adversely impact the species; (6) ongoing or planned efforts to protect and restore porbeagle and their habitat; and (7) management, regulatory, and enforcement information pertaining to porbeagle. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the ESA directs that a determination must be made “solely on the basis of the best scientific and commercial data available.” On or before December 12, 2015, we will issue a 12-month determination based on a review of the best scientific and commercial data available, including all relevant information received from the public in response to this 90-day finding.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. Please note that in our final determination we may not consider comments we receive after the date specified in the **DATES** section. If you submit your information via *http://www.regulations.gov*, your entire submission including personal identifying information will be posted on the website. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection, by appointment, during normal business hours at NMFS’ Greater Atlantic Regional Fisheries Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 23, 2015.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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